



## Disability in the UK: Rights and Policy Debate on 28 June 2018

### Summary

This House of Lords Library Briefing has been produced in advance of the debate taking place in the House of Lords on the motion moved by Baroness Thomas of Winchester (Liberal Democrat) on 28 June 2018 “that this House takes note of the different challenges facing disabled people in the United Kingdom in 2018”.

There are a wide range of challenges that disabled people can face. A number of recent select committee reports and briefings from the parliamentary Libraries examine some of the challenges faced by disabled people across a wide range of policy areas such as accessibility, housing, benefits, employment, education and transport. A reading list is provided at the end of this Briefing. This Briefing covers the legal framework governing disabled people’s rights in the UK both in domestic law, in the Equality Act 2010, and in international law, in the UN Convention on the Rights of People with Disabilities.

The Equality Act 2010 is the primary piece of legislation governing disabled people’s rights in the UK. This Act makes provisions for people with nine protected characteristics, including disability. In 2016, the House of Lords Equality Act 2010 and Disability Committee found that “combining disability with the other protected characteristics in one Act did not in practice benefit disabled people” and that disabled people’s rights were better protected under the previous legislation. The Government disputed this conclusion.

The UK has ratified the UN Convention on the Rights of People with Disabilities. Since 2016, the UN Committee on the Rights of People with Disabilities has published two reports examining the UK’s provisions for disabled people. In both reports the Committee expressed serious concerns that the level of protection and support provided to disabled people was not adequate. The Government disagreed with the Committee’s conclusions, but stated that there was more that could be done to help disabled people.

Concerns have been expressed that the UK’s withdrawal from the EU could lead to negative outcomes for disabled people. Possible routes by which this could occur are: weakening of legislative protections; lack of recourse to the Courts of Justice of the EU; and no longer participating in EU programmes which provide funding for projects for disabled people. The Government has stated that it does not intend to weaken disabled people’s rights and will preserve funding for existing projects.

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## **I. Equality Act 2010**

### **I.1 Summary**

The Equality Act 2010 provides the UK’s legal framework for protecting the rights of individuals from discrimination. It replaced numerous pieces of separate legislation covering discrimination, including:

- Equal Pay Act 1970;
- Sex Discrimination Act 1975;
- Race Relations Act 1976;
- Disability Discrimination Act 1995;
- Employment Equality (Religion or Belief) Regulations 2003;
- Employment Equality (Sexual Orientation) Regulations 2003;
- Employment Equality (Age) Regulations 2006;
- Equality Act 2006, Part 2; and
- Equality Act (Sexual Orientation) Regulations 2007.<sup>1</sup>

The Act lists nine protected characteristics—age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation—on the basis of which discrimination, as defined in the Act, is unlawful.<sup>2</sup> In the explanatory notes which accompany the Act, the then Labour Government stated that the purpose of the Act was to “harmonise discrimination law and to strengthen the law to support progress on equality”.<sup>3</sup>

The majority of the provisions in the Equality Act 2010 came into effect on royal assent. Some elements which are not yet in force include:

- the duty to make reasonable adjustments for disabled people to common parts of leasehold and commonhold premises;
- diversity reporting by political parties; and
- some provisions about taxi accessibility.<sup>4</sup>

### **I.2 Disability under the Equality Act 2010**

In the Equality Act 2010, a person is defined as having a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal and day-to-day

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<sup>1</sup> Equalities and Human Rights Commission, ‘[What is the Equality Act?](#)’, 30 October 2017.

<sup>2</sup> Equality Act 2010, ss 4 and 13.

<sup>3</sup> [Explanatory Notes to the Equality Act 2010](#), p 4.

<sup>4</sup> Equalities and Human Rights Commission, ‘[What is the Equality Act?](#)’, 30 October 2017.

activities.<sup>5</sup> The Act states that a person discriminates against a disabled person if they treat that person unfavourably because of something arising in consequence of their disability, and they cannot show that the treatment is a proportionate means of achieving a legitimate aim.<sup>6</sup>

Section 20 of the Act makes provisions regarding the requirement to make reasonable adjustments for disabled people in relation to services and public functions, premises, work, education and associations, which is imposed in various parts of the Act.<sup>7</sup> The explanatory notes provide an overview of the duty to make reasonable adjustments:

The duty comprises three requirements which apply where a disabled person is placed at a substantial disadvantage in comparison with non-disabled people. The first requirement covers changing the way things are done (such as changing a practice), the second covers making changes to the built environment (such as providing access to a building), and the third covers providing auxiliary aids and services (such as providing special computer software or providing a different service).<sup>8</sup>

### **1.3 House of Lords Equality Act 2010 and Disability Committee Report**

On 11 June 2015, the House of Lords confirmed the appointment of an ad hoc committee “to consider and report on the impact on people with disabilities of the Equality Act 2010”.<sup>9</sup> The Equality Act 2010 and Disability Committee’s report was published on 24 March 2016.

#### ***Committee’s Report***

The Committee’s remit focused on whether the Equality Act 2010 “adequately supports the fight against disability discrimination”.<sup>10</sup> The report questioned whether the Act’s provisions disadvantaged disabled people, who, it noted, may require “different treatment” if they are to enjoy access to facilities and services on the same terms as the non-disabled:

[The Act] ignores a crucial distinction between disability and the other protected characteristics. For the other protected characteristics, with

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<sup>5</sup> Equality Act 2010, s 6.

<sup>6</sup> *ibid*, s 15.

<sup>7</sup> *ibid*, s 20.

<sup>8</sup> [Explanatory Notes to the Equality Act 2010](#), p 25.

<sup>9</sup> [HL Hansard, 11 June 2015, cols 891–2](#).

<sup>10</sup> House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 5.

the possible exception of pregnancy and maternity, equality of opportunity is largely achieved by equality of treatment. For disabled people, equality of opportunity, to the extent that it is achievable, often requires different treatment.<sup>11</sup>

As a result, the report concluded that “combining disability with the other protected characteristics in one Act did not in practice benefit disabled people”.<sup>12</sup> Witnesses had been “almost unanimous” that advocating for the rights of disabled people “had been easier with a dedicated Disability Discrimination Act and with a single Disability Rights Commission, rather than a Commission [the current Equality and Human Rights Commission] covering all inequalities and human rights”.<sup>13</sup> However, the report conceded that attempting to separate statutory treatment of disability from the other protected characteristics would now be “impractical”, and therefore its intention was to “concentrate on improvements to the Act which will give greater prominence to disability and will increase the protection of disabled people”.<sup>14</sup>

The report therefore made recommendations concerning: the public sector equality duty; access to buildings, dwellings and transport facilities; access to justice; and the functions of the Equality and Human Rights Commission.

### **Government Response**

In its response to the Committee’s report, the Government defended the introduction of the Equality Act 2010, stating:

This Government is committed to ensuring that everyone can live their lives free from discrimination and harassment, including disabled people. Disability discrimination legislation has been in place since 1995, when the then Conservative Government passed a landmark piece of legislation, the Disability Discrimination Act. This Act was the first domestic Act on the issue of disability discrimination, prior to which it was legal to discriminate and exclude on the basis of disability. The 1995 Act was subsequently incorporated, with the support of the Conservative Party, into the Equality Act in 2010. We believe strongly therefore that the Equality Act 2010, and all our programmes that impact upon the lives of disabled people, act as tangible protections of disabled people’s rights. As the Post-Legislative Scrutiny Memorandum on the Equality Act 2010 (CM 9101—July 2015) shows, the Equality

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<sup>11</sup> House of Lords Equality Act 2010 and Disability Committee, [Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16, p 21.

<sup>12</sup> *ibid*, p 23.

<sup>13</sup> *ibid*, p 5.

<sup>14</sup> *ibid*, p 24.

Act has essentially preserved and taken forward the protections in the Disability Discrimination Act 1995 (DDA).<sup>15</sup>

## **2. United Nations Convention on the Rights of Persons with Disabilities and Committee's Reports on the UK**

### **2.1 United Nations Convention on the Rights of Persons with Disabilities**

#### ***Background***

The Convention on the Rights of Persons with Disabilities was adopted by the United Nations (UN) General Assembly on 13 December 2006 and entered into force in May 2008.<sup>16</sup> The UK signed the Convention on 30 March 2007 and ratified it on 8 June 2009.<sup>17</sup>

The UN Department of Economic and Social Affairs has summarised the purpose of the Convention:

The Convention is intended as a human rights instrument with an explicit, social development dimension. It adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.<sup>18</sup>

The UN has emphasised the Convention's embodiment of the principle that people with disabilities should not be treated as "objects" of charity, but rather as "subjects" with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent as well as being active members of society".<sup>19</sup>

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<sup>15</sup> Government Equalities Office, [Government Response to the House of Lords Select Committee Report on the Equality Act 2010: The Impact on Disabled People](#), 7 July 2016, Cm 9283, p 2.

<sup>16</sup> United Nations, '[Convention on the Rights of Persons with Disabilities \(CRPD\)](#)', accessed 13 June 2018.

<sup>17</sup> United Nations Treaty Collection, '[Convention on the Rights of Persons with Disabilities](#)', accessed 13 June 2018.

<sup>18</sup> United Nations, '[Convention on the Rights of Persons with Disabilities \(CRPD\)](#)', accessed 13 June 2018.

<sup>19</sup> *ibid.*

**Convention: Provisions**

Articles 1–3 of the Convention address the purpose, definitions, and general principles of the agreement. Article 4 covers the general obligations of signatories, stating that countries that join in the Convention commit to develop and carry out policies, laws and administrative measures for securing the rights recognized in the Convention and to abolish laws, regulations, customs and practices that constitute discrimination. Article 5 states that countries must recognise that all persons are equal before the law, prohibit discrimination on the basis of disability and guarantee equal legal protection.

Article 6 guarantees the equal rights and advancement of women and girls with disabilities, and Article 7 guarantees the rights of children with disabilities.

Under Article 8, ratifying countries are to combat stereotypes and prejudices and promote awareness of the capabilities of people with disabilities.

Article 9 addresses accessibility, requiring countries to identify and eliminate obstacles to people with disabilities accessing their environment, transportation, public facilities and services, and information and communications technologies.

Article 10 states that countries are to guarantee that people with disabilities enjoy their inherent right to life on an equal basis with others, and the right of disabled people to protection in situations of risk, such as armed conflict and humanitarian emergencies, is addressed in Article 11.

Articles 12–14 guarantee disabled people's equal recognition before the law, right of access to justice, and right to liberty and security, including that they are not arbitrarily deprived of their liberty.

Article 15 prohibits medical or scientific experiments on disabled people without the consent of the person concerned. Article 16 guarantees freedom from exploitation, violence and abuse, and stipulates that in cases of abuse, states must promote the recovery, rehabilitation and reintegration of the victim and investigate the abuse. Under Article 17, countries are obliged to protect the physical and mental integrity of people with disabilities.

Article 18 assures people with disabilities rights regarding residence and nationality on an equal basis with others. According to Article 19, disabled people must be able to live independently, to be included in the community, to choose where and with whom to live and to have access to in-home, residential and community support services. Article 20 states that countries have a duty to take measures to ensure personal mobility.

Article 21 guarantees freedom of expression for disabled people and requires countries to promote access to information by providing information intended for the general public in accessible formats.

Disabled people's right to privacy is set out in Article 22, and Article 23 ensures the right to respect for home and family life.

Article 24 stipulates that disabled people have an equal right to education, and Article 25 an equal right to health services. Article 26 imposes a duty on states to offer services to help disabled people attain, regain and improve skills, and Article 27 enshrines an equal right to work and employment, prohibiting discrimination and imposing a duty on employers to make reasonable adjustments.

Under Article 28, countries recognise the right to an adequate standard of living and social protection, including public housing, services and assistance for disability-related needs, as well as assistance with disability-related expenses in cases of poverty.

Article 29 relates to disabled people's participation in political and public life, and includes the right to equal participation, including the right to vote, to stand for elections and to hold office. Article 30 imposes a duty on states to ensure disabled people's participation in cultural life and recreation.

According to Article 31, countries commit to collect appropriate information, including statistics and research, to help formulate policies relating to disabled people.

Article 32 imposes a duty on states to provide assistance to developing countries in implementing the Convention.

Articles 33–9 address the implementation and monitoring of the Convention. Article 33 requires countries to designate a focal point in the Government and create a national mechanism to promote and monitor implementation of the Convention. Articles 34–9 establish the UN Committee on the Rights of Disabled Persons, which receives periodic reports from countries on their implementation of the Convention and makes recommendations.

The UK has also ratified the Optional Protocol to the Convention, which gives the Committee competence to examine individual complaints with regard to alleged violations of the Convention by countries which are party to the Protocol.<sup>20</sup>

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<sup>20</sup> United Nations Human Rights Office of the High Commissioner, '[Committee on the Rights of Persons with Disabilities](#)', accessed 13 June 2018.

## 2.2 Proceedings under the Optional Protocol

### **Background and Report**

In 2015, the Government confirmed that an investigation had been launched into the UK by the UN Committee on the Rights of Persons with Disabilities under the Optional Protocol.<sup>21</sup> This investigation was opened after the Committee received a formal request from some UK disability organisations “alleging that serious and systematic violations of the provisions of the Convention were occurring against persons with disabilities”.<sup>22</sup>

The Committee published its report on this investigation in October 2016. It concluded that several elements of the way in which the UK Government was supporting disabled people were not sufficient to meet its commitments under the Convention, stating that “there is reliable evidence that the threshold of grave or systematic violations of the rights of persons with disabilities has been met in the State party”.<sup>23</sup> The Committee’s report discussed what it regarded as flaws in the assessment process for various disability-related social security benefits, negative impacts of policy changes on the ability of disabled people to live independently and as part of the community, and the higher-than-average prevalence of low income households among households including a person with disabilities.

The Committee made eleven recommendations to the UK Government, including that the Government should:

- ensure that disabled people’s rights are actively considered in future policy decisions;
- ensure access to justice for disabled people;
- actively consult with disabled people;
- combat negative stereotypes of disabled people; and
- set up a mechanism to monitor the impact of policies related to disabled people.<sup>24</sup>

### **Government Response**

The Government did not accept the Committee’s findings. In its response to

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<sup>21</sup> House of Commons, ‘[Written Question: Social Security Benefits: Disability](#)’, 8 September 2015, 9424.

<sup>22</sup> United Nations Committee on the Rights of Persons with Disabilities, [Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland Carried out by the Committee under Article 6 of the Optional Protocol to the Convention: Report of the Committee](#), 6 October 2016, p 3.

<sup>23</sup> *ibid*, p 20.

<sup>24</sup> *ibid*, pp 21–22.

the Committee's report, the Government disputed the accuracy of some of the facts relied upon and argued that the report "focuses on too narrow a scope and, in doing so, presents an inaccurate picture of life for disabled people in the UK".<sup>25</sup> The Government argued that the report failed to reflect significant measures, including:

- personal budgets to increase choice and control of care and living arrangements;
- improvements to the accessibility of housing and transport;
- the wide range of work-related support available to disabled people; and
- financial protections, such as tax and pension credits and the exemption of disability-related benefits from the benefit cap and benefits freeze.<sup>26</sup>

After the Committee's report was published, a public petition was launched calling on the Government to implement the Committee's recommendations.<sup>27</sup> In its response, the Government said:

This Government engaged fully with the inquiry process. However, we strongly reject the findings and believe that the core intentions of many of the recommendations are already being fulfilled.

[...]

Many of the recommendations promote approaches and actions that we already take, such as actively engaging disabled people in policy design and delivery. Others promote actions that the UK Government has already identified as areas for improvement; the Government response sets out some of the work being done across the UK to ensure progress in these areas, such as increasing the accessibility of information and tackling negative attitudes towards disabled people. Several recommendations are prescriptive in nature, [citing] specific methodologies that should be implemented. The UK is committed to meeting its obligations of progressing towards the full participation and inclusion of disabled people in all aspects of life on an equal basis. However, how we ensure this progression remains for the UK Government, and the wider Parliament, to decide.<sup>28</sup>

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<sup>25</sup> United Nations Committee on the Rights of Persons with Disabilities, [Observations by the United Kingdom of Great Britain and Northern Ireland on the Report of the Committee on Its Inquiry Carried Out Under Article 6 of the Optional Protocol](#), 13 January 2017, p 4.

<sup>26</sup> *ibid.*

<sup>27</sup> UK Government and Parliament Petitions, '[Force the Government to Act on the Eleven Recommendations of the UNCRPD Report](#)', accessed 14 June 2018.

<sup>28</sup> *ibid.*

The Government accepted that “there is more to do to meet the Convention’s ambition of full participation and inclusion”, and highlighted its commitment to helping more disabled people find and stay in employment.

## 2.3 Examination of the UK’s Initial Report

### **Background**

According to the Convention on the Rights of Persons with Disabilities, within two years of ratification of the Convention, and every four years thereafter, countries which are party to the Convention (‘State Parties’) are obliged to submit to the Committee a report on the implementation of the Convention in their country.<sup>29</sup> The Convention then states that the Committee will make recommendations to the State Party based on the report.<sup>30</sup>

In 2011, the UK submitted its first report to the Committee. The Committee’s consideration of the report was postponed until after the proceedings under the Optional Protocol described above. In 2016, the Committee restarted its processes and posed certain questions to the UK Government, and received replies, and also received submissions from civil society organisations.<sup>31</sup>

The Committee also received submissions from the Equality and Human Rights Commission, the Equality Commission for Northern Ireland, the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission in their joint role as the UK Independent Mechanism (UKIM) under Article 33 of the Convention. In its final submission, published in July 2017, the UKIM identified problems under 14 thematic areas which it argued are particularly pressing for disabled people, such as: enhancing the status of the Convention in domestic law and policy; accessibility; achieving an independent and adequate standard of living and social protection; employment; and freedom from exploitation, violence and abuse.<sup>32</sup>

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<sup>29</sup> United Nations, [Convention on the Rights of Persons with Disabilities](#), Article 35.

<sup>30</sup> *ibid*, Article 36.

<sup>31</sup> For a list of the documents submitted under this examination round, please see United Nations Human Rights Office of the High Commissioner, ‘[Reporting Status for United Kingdom of Great Britain and Northern Ireland](#)’, accessed 13 June 2018, under the heading Convention on the Rights of Persons with Disabilities, Reporting Cycle I.

<sup>32</sup> UK Independent Mechanism, [Disability Rights in the UK: Updated Submission to the UN Committee on the Rights of Persons with Disabilities in Advance of the Public Examination of the UK’s Implementation of the UN CRPD](#), July 2017.

The UKIM summarised its view of the UK's progress on implementing the Convention:

In UKIM's view, the UK and devolved governments have not taken all the appropriate steps to progress implementation of the CRPD and have introduced some retrogressive measures that have had a significant negative effect on disabled people.<sup>33</sup>

The UKIM expressed its concern that "social security reforms introduced by successive UK governments since 2010 are having a particularly negative, disproportionate and cumulative impact on the rights to independent living and an adequate standard of living for disabled people".<sup>34</sup>

### **Consideration Meeting**

In August 2017, the Committee held a discussion with the UK to mark the end of its consideration of the UK's initial report. At the meeting, the Committee argued that access to the rights enshrined in the Convention was uneven across the country. It also questioned the UK's delegation about: what it regarded as "high representation of persons of African and Caribbean origin in psychiatric institutions, and a disproportionate use of the Mental Health Act against people of African descent"; access to justice, particularly as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2012; measures to reduce poverty and create jobs for disabled people; and making mainstream schools more inclusive of disabled people.<sup>35</sup>

Karen Jochelson, Head of the Office for Disability Issues at the Department of Work and Pensions, argued that the Equality Act 2010 strengthened protections against discrimination on the basis of disability and recognised indirect disability discrimination.<sup>36</sup> She emphasised that the UK had set a clear goal to get one million more disabled people and people with health conditions into work over the next ten years, and said that the UK was determined to be a place that worked for everyone and ensure that disability did not indicate the path that a person took in life. Ms Jochelson said that the country would reflect on key points highlighted during the meeting, including the emphasis on engaging with disabled people in decision and policy making, the availability of data to demonstrate the impact of policies

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<sup>33</sup> UK Independent Mechanism, [Disability Rights in the UK: Updated Submission to the UN Committee on the Rights of Persons with Disabilities in Advance of the Public Examination of the UK's Implementation of the UN CRPD](#), July 2017, p 4 and 8.

<sup>34</sup> *ibid*, p 47.

<sup>35</sup> United Nations Human Rights Office of the High Commissioner, '[Committee on the Rights of Persons with Disabilities Reviews Report of the United Kingdom](#)', 24 August 2017.

<sup>36</sup> *ibid*.

on disabled people, and the importance of the involvement of disabled people in awareness raising.

## **Report**

The Committee published its Concluding Observations report on the UK in October 2017. The Committee expressed concerns about multiple aspects of the treatment and rights of disabled people in the UK in all but five of the 30 areas of rights the Convention addresses, and made 84 recommendations.<sup>37</sup> In its conclusion, the Committee asked the UK to provide an update on measures taken to implement its recommendations on living independently and being included in the community, work and employment, and achieving an adequate standard of living and social protection within a year. It also recommended that the UK undertake a process to implement and follow up recommendations issued by the Committee in both its report carried out under the Optional Protocol and the conclusions on the initial report.

The Equality and Human Rights Commission has summarised the UN's main areas and concerns in the following report:

- Equality and Human Rights Commission, [How is the UK Performing on Disability Rights? The UN's Recommendations for the UK](#), January 2018.

## **Government Response**

In a supplementary oral question in the House of Lords on disabled access, the Bishop of Salisbury asked Baroness Sugg, Parliamentary Under Secretary of State for Transport, about the Government's response to the Committee's report:

Does the Minister agree with the UN committee's concern that not enough is being done to apply the Convention on the Rights of Persons with Disabilities and to involve disabled people themselves in decisions that affect their lives? What have the Government heard from disabled people themselves about the impact of austerity on their access to the physical environment and to housing, transport, information and other services? How will the Minister respond to disabled people's concerns about the UK's increasing non-compliance with existing legislation affecting their access to these things—for example, our meeting the obligation to carry out impact assessments

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<sup>37</sup> United Nations Committee on the Rights of Persons with Disabilities, [Concluding Observations on the Initial Report of the United Kingdom of Great Britain and Northern Ireland](#), 3 October 2017.

and gather statistics about policies likely to have a disproportionately negative impact on disabled people?<sup>38</sup>

Baroness Sugg replied:

My Lords, as I said, the Government are absolutely committed to improving the lives of disabled people in both the UK and through our international development work. We are constructively considering the UN recommendations and will provide an update on the report, as requested, this summer. We have some of the strongest equalities legislation in the world, including the Equality Act 2010. We also have a strong record of engaging with disabled people to inform policy-making across government, supported by clear guidance stating the need to consult with all groups impacted—but of course we seek to continually improve our practices. For example, as I just mentioned, the Department for Transport is consulting on proposed changes to the blue badge scheme, and the views of disabled people received during this consultation will be critical in finalising policy.<sup>39</sup>

On 6 June 2018, Tulip Siddiq (Labour MP for Hampstead and Kilburn) tabled a written question on the Government's response to the UN Committee's observations about the employment and pay gap for disabled people in the UK. In response, Sarah Newton, Minister of State for Disabled People, Health and Work, said:

This Government is committed to improving employment outcomes for disabled people and those with long-term health conditions. We have made a great deal of progress: there were 600,000 more disabled people in work in 2017 than in 2013, and the employment rate for disabled people has improved by 5.6 percent in the same period.

Despite this success, we are committed to going further, which is why in November 2017 we set out our ambition to see one million more disabled people in work over the next ten years, as well as the actions we are taking to achieve this goal in the workplace, in health services, and in the welfare system.

Estimates from ONS show that, in 2016, the median hourly wage for disabled people was £11.40, compared with £12.20 for non-disabled people. There are a range of factors which could contribute to a difference in median hourly wage—such as working part-time or a difference in occupation.

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<sup>38</sup> [HL Hansard, 28 February 2018, col 658.](#)

<sup>39</sup> *ibid.*

In addition, and to progress the broader agenda for disabled people we will be setting up a new Inter-Ministerial Group to coordinate work across Government, and seeking to reinvigorate our engagement with disability stakeholders to help shape our plans.<sup>40</sup>

Speaking in a Westminster Hall debate in the House of Commons on the Government's response to the UN report on the Convention in June 2018, Ms Newton highlighted the Government's commitment to the Convention and defended the Government's record, and that of the previous Coalition Government, stating:

The Government are utterly committed to the convention.

[...] the proportion of people in relative poverty in a family in which someone is disabled has not risen since 2010. These allegations that we are driving people to food banks and forcing them into destitution is simply irresponsible. The proportion of people in absolute poverty in a family in which someone is disabled is at a record low, because we are spending more than £50 billion a year on benefits to support disabled people and people with health conditions. That is up by £7 billion since 2010; it is around 2.5 percent of our gross domestic product and accounts for more than 6 percent of Government spending. As a share of our GDP, public spending on disability and incapacity is the second highest in the G7; only Germany spends more. Disability spending will be higher than 2010 in every year through the spending review. There has been no freeze in the benefits that disabled people receive, and those benefits are not subject to the benefit cap.<sup>41</sup>

### ***Civil Society Delegation's Response***

Following the meeting between the Committee and UK Government representatives in August 2017, the UK Delegation of Deaf and Disabled People's Organisations issued a statement supporting the Committee's conclusions:

Today the UN(CRPD) Committee has, once again, condemned the UK Government's record on Deaf and Disabled People's human rights. They have validated the desperation, frustration and outrage experienced by Deaf and Disabled people since austerity and welfare cuts began. It is not acceptable for the UK Government to ignore the strong and united message of the disability community.

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<sup>40</sup> House of Commons, '[Written Question: Employment: Disability](#)', 14 June 2018, 150743.

<sup>41</sup> [HC Hansard, 20 June 2018, col 124–5WH](#)

UK Government representatives committed during the review to rethinking the way they support Deaf and Disabled People to monitor our rights. We welcome this commitment. However, we are clear that our involvement must be genuine and inclusive and that we cannot accept anything less than progress on delivering the human rights enshrined in the Convention, and denied us for too long.<sup>42</sup>

### 3. UK's Exit from the European Union

#### 3.1 Legislation

As discussed above in section 1, the primary legislation in the UK governing disability rights is the Equality Act 2010. However, the European Union (EU) has also legislated on disabled people's rights, including:

- the Employment Equality Directive 2000, which requires Member States to prohibit disability discrimination in employment;
- the Air Passenger Rights Regulation 2006 (together with similar regulations on rail, ship and coach travel), which requires disabled people to be given assistance when travelling by plane in EU and European Economic Area (EEA) countries;
- the EU Medicinal Products for Human Use Directive 2004, which requires the packaging of medicinal products to include Braille labelling;
- the Public Procurement Directives 2014, which require public bodies to include accessibility in technical specifications; and
- the Public Sector Websites and Mobile Applications Directive 2016, which requires public sector bodies to ensure that their websites and mobile apps comply with accessibility standards so that they can be used by disabled people.<sup>43</sup>

Under the terms of the European Union (Withdrawal) Bill, all existing EU legislation, including that related to disability rights, will be preserved in UK law so that “as a general rule, the same rules and laws will apply on the day after the UK leaves the EU as before”.<sup>44</sup> However, concerns have been expressed that leaving the EU will nonetheless have a negative impact on legislative protections for disabled people. In June 2017, Disability Rights UK outlined possible ways in which this could happen: if directly applicable EU legislation is ‘corrected’ in such a way as to make it less effective or subsequently repealed; if disability rights contained in EU directives which have not yet been implemented in the UK before the date of exit from the

<sup>42</sup> Disability Wales, [‘UN Committee Concluding Observations—UK Going Backwards on Rights’](#), 31 August 2017.

<sup>43</sup> Disability Rights UK, [The Implications of Brexit for Disability Rights](#), June 2017, p 11.

<sup>44</sup> [European Union \(Withdrawal Bill\) Explanatory Notes](#), p 8.

EU are not subsequently implemented; and if secondary legislation implementing EU directives is repealed, which would be possible as the UK will no longer be obliged to comply with EU law.<sup>45</sup>

The Government introduced an amendment to the European Union (Withdrawal) Bill in response to concerns about powers given to ministers in the Bill being used to weaken equalities legislation. This amendment requires a minister using the powers in the Bill to lay a statutory instrument before Parliament to correct deficiencies in legislation to produce an explanatory statement:

- indicating whether the draft legislation amends/repeals/revokes equalities legislation (the Equality Act 2010, the Equality Act 2006 or any secondary legislation made under either of those Acts)—and if so, what the effect is;
- indicating that the minister has had due regard under equalities legislation to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Equality Act 2010, so far as required by equalities legislation;
- explaining the instrument or draft and the reasons for it;
- explaining what any relevant law did before exit day and how the retained EU law is being changed; and
- that the minister considers that the instrument does no more than is appropriate.<sup>46</sup>

This amendment was agreed without division. However, when the Bill was considered at report stage in the House of Lords, Lord Low of Dalston (Crossbench) argued that this amendment did not provide adequate protection for equality rights because:

[...] it does not require a statement that current levels of protection will be maintained. It merely requires the minister to explain whether and how equality legislation has been changed, and that due regard has been paid to the need to eliminate conduct prohibited by the Equality Act 2010. There is nothing to stop the minister, having had due regard to this need, deciding to reduce protections anyway.<sup>47</sup>

Lord Low withdrew his amendment, which would have committed the Government to maintaining existing levels of equalities protection.<sup>48</sup>

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<sup>45</sup> Disability Rights UK, [The Implications of Brexit for Disability Rights](#), June 2017, pp 13–14.

<sup>46</sup> [Explanatory Notes to the European Union \(Withdrawal\) Bill](#), p 59

<sup>47</sup> [HL Hansard, 8 May 2018, col 112](#).

<sup>48</sup> [ibid](#), col 114.

The Government has stated it does not intend to make changes to existing legislation governing rights for disabled people. In a debate in the House of Lords on the impact of the UK's exit from the EU, Lord Henley, the then Parliamentary Under Secretary of State for Work and Pensions, said:

I start by stating clearly that this Government have a firm commitment, made clear in our manifesto and later on, to maintaining the United Kingdom's strong and long-standing record of protecting the rights and traditional liberties, and to supporting disabled people to fulfil their potential. The decision to leave the European Union does not change this, and officials in the Department for Work and Pensions, in which I have the honour of serving, and in other departments will be working closely with all colleagues, and particularly with the Department for Exiting the EU, to ensure that the impact on disabled people is considered fully.<sup>49</sup>

### 3.2 Courts

At present, the Court of Justice of the EU (CJEU) is the final court of appeal for EU-related cases. National courts are obliged to give effect to its judgments and to disapply any national laws that conflict with EU law as interpreted by the Court.<sup>50</sup> After the UK leaves the EU, individuals will not be able to have their equality cases referred to the CJEU and the UK courts will no longer be able to disapply law found to be incompatible with EU equality law by the CJEU.

Examining the potential impact of the UK's withdrawal from the EU on equalities legislation, the House of Commons Women and Equalities Committee found that "the work of the Court of Justice of the EU (CJEU) has been particularly important in providing, in effect, an absolute backstop for equalities".<sup>51</sup> The Committee highlighted that in addition to the UK no longer being able to disapply law found to be incompatible with EU equality law, the UK will also lose the CJEU's function as an arbiter of incompatibility with the EU law principles of equality.<sup>52</sup> The Committee recommended that the Government bring forward legislation to require future legislation to be compatible with the Equality Act 2010:

The Government should give strong consideration to bringing forward an amendment to the Equality Act 2010 to mirror provisions in the Human Rights Act 1998. The purpose of that amendment would be to set out that public authorities must not act in a way that contravenes

<sup>49</sup> [HL Hansard, 2 February 2017, col 1335](#).

<sup>50</sup> House of Commons Women and Equalities Committee, [Ensuring Strong Equalities Legislation after the EU Exit](#), 28 February 2017, HC 799 of session 2016–17, p 5.

<sup>51</sup> *ibid*, p 13.

<sup>52</sup> *ibid*.

the Equality Act unless required to do so by another Act of Parliament; that ministers, when presenting any Bill, must make a declaration of compatibility with the Act; that interpretation of legislation by the courts must take account of the Act and be read as far as possible to comply with its provisions; and that, if any legislation is incompatible with the Act, a declaration of incompatibility should be made by the court.<sup>53</sup>

### 3.3 Funding

The EU currently makes funding available to support disabled people through a range of programmes. The European Commission summarised these as follows:

- The **European Social Fund (ESF)** sets out to support the EU implementation of the UNCRPD. There are currently numerous ESF projects providing concrete opportunities for people with disabilities in employment, training, accessibility, care services, social innovation and more. In total, 2 to 2.5 million disadvantaged people, including persons with disabilities, are expected to benefit from funding.
- The **Horizon 2020** research programme supports research projects on active and healthy ageing, mental health, personalised medicines, access to healthcare, ICTs, mobility aids, devices and assistive technologies, transport or socio-economic issues, addressing the daily needs of people with disabilities. For instance, the Commission dedicated 16 million euros for the period 2014–2015 to research on multimodal interfaces for assisting people with disabilities and 17 million euros to “Advanced digital games/gamification technologies”.
- The **European Regional Development Fund** prioritises the promotion of social inclusion, de-institutionalisation and the fight against discrimination, while taking into account the specific needs of persons with disabilities and requiring accessibility. Erasmus+ (2014–2020) not only includes special needs support for mobility actions, but also funds disability-focused projects and organisations such as the European Forum of Sign Language Interpreters, and Telecentre Europe.
- The **Rights, Equality and Citizenship Programme** promotes the rights of persons with disabilities and non-discrimination through specific funding to EU level disability organisations, research, training and awareness-raising actions.
- The **EU Programme for Employment and Social Innovation** supports quality and sustainable employment,

<sup>53</sup> House of Commons Women and Equalities Committee, [Ensuring Strong Equalities Legislation after the EU Exit](#), 28 February 2017, HC 799 of session 2016–17.

adequate and decent social protection, the fights against social exclusion and poverty, and the improvement of working conditions, including for people with disabilities.

- The **European Agricultural Fund for Rural Development** promotes social inclusion and poverty reduction in rural areas. Measures such as basic services and local development strategies may contribute to improve the situation of persons with disabilities in the programming area. Furthermore, technical assistance support can be used to ensure compliance with the ex-ante conditionality on “Disability”.<sup>54</sup>

In a debate in the House of Commons on 11 July 2017, Matthew Pennycook, (Labour MP for Greenwich and Woolwich), asked the Government if UK programmes currently receiving such EU funding would continue to do so after the UK leaves the EU.<sup>55</sup> Penny Mordaunt, Minister for Women and Equalities, said in response:

For projects signed off after the autumn statement, which will continue after we leave the EU, funding will be honoured by the Treasury. We expect those projects to provide value for money and to be in line with our domestic priorities. We want leaving the EU to mean that we can take our own decisions and set for ourselves the policy objectives that were previously targeted to gain EU funding. The Government will continue to consult stakeholders to review EU funding schemes in the round and ensure that any ongoing funding commitments best serve the UK’s national interests.<sup>56</sup>

In response to a question about whether funding from the EU for such projects would be matched in the long term, the Minister replied:

Future projects that meet the objectives of the Government of the day and that offer good value for money will be funded by the Treasury. New as well as continuing projects will be dealt with in that way. However, we are well aware that the UK’s third sector has mapped the fact that it relies on funding from all sorts of other sources than the European social fund. DExEU [Department for Exiting the European Union] and the Equality and Diversity Forum have a project that is looking at how to ensure that the sector will not suffer, and that leaving the EU will not be detrimental to the funding that goes into those projects.<sup>57</sup>

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<sup>54</sup> European Commission, [Progress Report on the Implementation of the European Disability Strategy \(2010–2020\)](#), 2 February 2017, pp 16–17.

<sup>55</sup> [HC Hansard, 11 July 2017, col 77WH](#).

<sup>56</sup> *ibid*, cols 80–1WH.

<sup>57</sup> *ibid*.

## 4. Further Reading

Below is a selection of parliamentary material relevant to the debate title.

### Parliamentary Committees

- House of Commons Work and Pensions Committee, [PIP and ESA Assessments](#), 14 February 2018, HC 829 of session 2017–19; and [Government Response](#), 23 April 2018, HC 986 of session 2017–19
- House of Commons Women and Equalities Committee, [Building for Equality: Disability and the Built Environment](#), 25 April 2017, HC 631 of session 2016–17; and [Government Response](#), 15 March 2018, Cm 9527
- House of Commons Work and Pensions Committee, [Disability Employment Gap](#), 3 February 2017, HC 56 of session 2016–17
- House of Lords Equality Act 2010 and Disability Committee, [The Equality Act 2010: The Impact on Disabled People](#), 24 March 2016, HL Paper 117 of session 2015–16; and [Government Response](#), 7 July 2016, Cm 9283

### Parliamentary Libraries

- House of Lords Library, [Support for Carers](#), 14 June 2018
- House of Commons Library, [Special Educational Needs: Support in England](#), 20 April 2018
- House of Lords Library, [Work of the Ad Hoc Committees in 2015–16: House of Lords Equality Act 2010 and Disability Committee](#), 20 April 2018
- House of Commons Library, [Changes to the Personal Independence Payment Eligibility Criteria](#), 17 April 2018
- House of Commons Library, [Disabled Adaptations in Leasehold Flats and Common Parts](#), 26 March 2018
- House of Commons Library, [Blue Badges and Parking for Disabled People in England](#), 7 March 2018
- House of Commons Library, [Access to Transport for Disabled People](#), 5 March 2018
- House of Commons Library, [People with Disabilities in Employment](#), 8 January 2018